

**UNITED STATES GOVERNMENT  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 13**

MICHAEL REESE MEDICAL CENTER CORPORATION

Employer

and

Case 13-RC-21397

NATIONAL NURSES ORGANIZING COMMITTEE/CALIFORNIA  
NURSES ASSOCIATION (NNOC/CAN)

Petitioner

and

SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 20

Intervenor

**DECISION AND DIRECTION OF ELECTION**

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing on this petition was held on before a hearing officer of the National Labor Relations Board, herein referred to as the Board, to determine whether it is appropriate to conduct an election in light of the issues raised by the parties.<sup>1</sup>

**I. Issue**

The sole issue presented is whether the Assistant Patient Care Managers (“APCMs”) are statutory supervisors.<sup>2</sup> The Employer argues that APCMs qualify as supervisors under the Act

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<sup>1</sup> Upon the entire record in this proceeding, the undersigned finds:

- a. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
- b. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.
- c. The labor organization involved claims to represent certain employees of the Employer.
- d. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Sections 2(6) and (7) of the Act.

<sup>2</sup> SEIU Local 20, with the concurrence of the Employer, claims that a 2003 no-raid agreement between the SEIU and the CNA mandates that the Region suspend further processing of the Petition pending the outcome of enforcement proceedings relating to that agreement. Based on an administrative investigation, I concluded that the no-raid provision in the agreement, is, by its very terms, limited to organizing disputes in California. Nonetheless, in support of its argument, SEIU Local 20 sought to present witnesses to testify that the parties actually intended that

based principally on five criteria listed in Section 2(11) of the Act. Namely, that APCMs have the authority to: 1) effectively recommend wage increases for other employees through their involvement in evaluations, 2) hire or effectively recommend that employees be hired; 3) discipline employees for both attendance and non-attendance related matter; 4) assign work to other employees; and 5) adjust grievances of other employees. The Employer, while noting that there are differences in the duties of APCMs in different departments, asserts that the APCMs as a classification have supervisory authority within the meaning of Section 2(11) of the Act. The Petitioner and Intervenor take the position that the APCMs are not supervisors under the Act.

## **II. Decision**

I have concluded, for the reasons articulated below, that the APCMs should vote subject to challenge.

Accordingly, IT IS HEREBY ORDERED that an election be conducted under the direction of the Regional Director for Region 13 in the following bargaining unit:

All full-time and part-time registered nurses, and all in-house registry registered nurses who averaged at least four or more hours worked per week during the 13 weeks prior to the eligibility date, in positions requiring a registered nurse license employed by the Employer currently located at 2929 South Ellis, Chicago, Illinois; but excluding all other employees, agency registered nurses, traveler registered nurses, office clerical employees, managerial employees, confidential employees, casual employees, guards and supervisors as defined by the Act.

## **III. Statement of Facts**

The Employer provides various medical services at its facility located in Chicago, Illinois. The National Nurses Organizing Committee/California Nurses Association (NNOC/CAN) filed the instant petition seeking to represent the following employees employed by the Employer: all full-time, part-time, and in-house registry registered nurses in positions requiring a registered nurse license. There are approximately 260 employees in the petitioned for unit. Service Employees International Union, Local 20 (SEIU Local 20) intervened in this proceeding. At the hearing the parties stipulated that charge nurses are not statutory supervisors, and based thereon, I so conclude. The parties also stipulated that the clinical nurse specialist<sup>3</sup> is a managerial employee and I likewise so conclude. Accordingly, charge nurses are included in the unit and shall be permitted to vote, and the clinical nurse specialist is excluded from the unit.

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provision to have nationwide applicability. However, under well-settled rules of contract interpretation, because I have determined that the agreement is unambiguous as to the scope of the no-raiding provision, it would be improper to allow extrinsic evidence toward determining the meaning of that term of the agreement. See, e.g., *Des Moines Register & Tribune Co.*, 339 NLRB No. 130, slip op. at 3 (2003). Accordingly, SEIU Local 20's and the Employer's request that further processing of this petition be suspended pending resolution of the grievance on the no-raid provision of that agreement is hereby rejected.

<sup>3</sup> Specifically, the clinical nurse specialist at issue is Kris Schroeder, and she works in the 10-Klien medical-surgical services department.

The Employer currently employs a total of 12 APCMs in eight different departments.<sup>4</sup> Those eight departments are: 1) labor and delivery; 2)obstetrics/gynecology (“OB/GYN”); 3) pediatrics; 4) special care nursery; 5) the medical-surgical services department located on the 10<sup>th</sup> floor of the Klein Building (known as the “10-K med-surg department”); 6) recovery room/post-anesthesia care unit (“PACU”); 7) operating room (“OR”); and 8) psychiatry. All of these departments have one APCM, with the exception of the 10-K med-surg department, which has two APCMs, and psychiatry, which has a total of four APCMs who oversee five separate psychiatry units.

I note at the outset that none of the disputed APCMs testified at the hearing. Rather, their immediate supervisors, typically patient care managers (PCMs), were the primary source of evidence regarding the APCM’s 2(11) authority. Some of the PCMs’ testimony is conclusory, such as the assertion that, for example, the labor and delivery and APCM has the authority to discipline other employees, without any specific examples described. On the other hand, the evidence regarding other APCMs authority in this regard was more substantial. For example, the Employer presented a corrective counseling form issued by an APCM in the OR department. According to that APCMs supervisor, the OR APCM decided to issue the discipline independently, without consulting with anyone, and only told the supervisor about it in order to advise her of the situation.

Similarly, it is clear that several of the APCMs in various departments prepare written yearly evaluations of other employees. While the forms vary somewhat among departments, this task includes the APCMs independently assigning numerical rankings to various job-related skills. For some employees, such as the full-time nurses, these rankings are then used as the exclusive basis for determining the percent wage increases the employees will receive. However, some of the APCMs, have little or no involvement in the evaluation process, and accordingly do not have any authority to effect other employees wage rates.

Moreover, the actual authority possessed by some of the APCMs is in flux. For example, in the Psychiatry department the Employer has utilized APCMs for less than a year. Accordingly, the PCM who oversees the four APCMs in psychiatry is in the process of training the APCMs to have more independence regarding subordinate employees. Thus, although some of the APCMs there assign points in the detailed evaluations recently developed in psychiatry, due to the somewhat complex calculations involved, the PCM, and not the APMCs, actually performs the calculations to arrive at the amount of the wage increase.

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<sup>4</sup> The emergency room (ER) apparently used to have an APCM, but the position is currently vacant. In its brief, the Employer asserts that based on the ER APCM position description, I should conclude that the position is supervisory, and therefore not appropriately included in the unit. However, it is well-settled that job descriptions are not, without more, sufficient to conclude that a position is supervisory. *Franklin Hosp. Medical Ctr.*, 337 NLRB 826, 829 (2002). In addition, given the wide variance in authority granted to APCMs in the various departments where they work, I cannot conclude, based on the record evidence, that the ER APCM position is supervisory at this time. However, in the event the Employer fills the position, a full review of the duties and authority afforded to the person holding that position would be necessary to make such a determination. This uncertainty, like the others noted below, supports allowing the APCMs to vote, subject to challenge.

#### **IV. Analysis**

The Act defines a supervisor as:

any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

In addition, Section 2(11) sets forth a three-part test for determining supervisory status. Individuals are statutory supervisors if (1) they hold the authority to engage in any one of the twelve listed supervisory functions; (2) their exercise of such authority requires "independent judgment" and is not merely routine or clerical, and (3) their authority is held "in the interest of the employer." See, *NLRB v. Kentucky River Cmty. Care, Inc.*, 532 U.S. 706, 712 (2001). An individual need only exercise one of the functions enumerated in Section 2(11) to be found to be a supervisor. *Kentucky River Cmty. Care*, supra; *Schnurmacher Nursing Home v. NLRB*, 214 F.3d 260, 264 (2d Cir. 2000); *Butler-Johnson Corp. v. NLRB*, 608 F.2d 1303, 1306 n.4 (9th Cir. 1979) ("[t]he enumerated functions in Section 2(11) are to be read in the disjunctive, and the existence of any of them, regardless of the frequency of their performance, is sufficient to confer supervisory status") (citations omitted.)

As the party asserting that the APCMs are statutory supervisors, the burden of proving this fact rests with the Employer. *Kentucky River Cmty. Care*, supra. However, in this case, given the variances among the duties and authority exercised by the APCMs in different departments, the duties and authorities of some APCMs are in transition, and the conflicting evidence as to the Section 2(11) status of the APCMs, I find that it would best effectuate the purposes and policies of the Act to promptly proceed with the election and permit the APCMs to vote, subject to challenge, pursuant to the Challenged Ballot Procedure described in the NLRB Casehandling Manual Part 2, Representation Proceedings, at Section 11338. Thereafter, if the challenges are determinative, a decision can be made regarding whether the appropriate status of the APCMs.

#### **V. Direction of Election**

An election by secret ballot shall be conducted by the undersigned among the employees in the unit(s) found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit(s) who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the

election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by National Nurses Organizing Committee/California Nurses Association (NNOC/CAN); Service Employees International Union, Local 20; or no labor organization.

## **VI. Notices of Election**

Please be advised that the Board has adopted a rule requiring election notices to be posted by the Employer at least three working days prior to an election. If the Employer has not received the notice of election at least five working days prior to the election date, please contact the Board Agent assigned to the case or the election clerk.

A party shall be estopped from objecting to the non-posting of notices if it is responsible for the non-posting. An employer shall be deemed to have received copies of the election notices unless it notifies the Regional Office at least five working days prior to 12:01a.m. of the day of the election that it has not received the notices. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure of the Employer to comply with these posting rules shall be grounds for setting aside the election whenever proper objections are filed.

## **VII. List of Voters**

To insure that all eligible voters have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *N.L.R.B. v. Wyman-Gordon Company*, 394 U.S. 759 (1969). Accordingly, it is directed that 2 copies of an eligibility list containing the full names and addresses of all the eligible voters must be filed by the Employer with the Regional Director within 7 days from the date of this Decision. *North Macon Health Care Facility*, 315 NLRB 359, fn. 17 (1994). The Regional Director shall make this list available to all parties to the election. In order to be timely filed, such list must be received in Region 13's Office, 209 South LaSalle Street, 9<sup>th</sup> Floor, Chicago, Illinois 60604, on or before **November 15, 2005**. No extension of time to file this list will be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

## **VIII. Right to Request Review**

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the

Executive Secretary, 1099 14th Street NW, Washington, DC 20005-3419. This request must be received by the Board in Washington by **November 22, 2005**.

DATED at Chicago, Illinois this 8<sup>th</sup> day of November 2005.

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Regional Director  
National Labor Relations Board  
Region 13  
209 South LaSalle Street, 9<sup>th</sup> Floor  
Chicago, Illinois 60604

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